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September 7, 2007

**Via Facsimile**

Honorable Robert P. Patterson  
United States District Court  
Southern District of New York  
U.S. Courthouse  
500 Pearl Street, Room 2550  
New York, New York 10017-1316

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 9/11/07

**MEMO ENDORSED**

**Re: Hudson Realty Capital Fund III, LP et al. v. Millenia Luxury  
Condominiums (Florida) LLC, et al., 07 CV 3614 (RPP)**

Dear Judge Patterson:

We represent Plaintiffs Hudson Realty Capital Fund III LP, HRC Fund III Pooling Domestic, LLC and HRC Fund III Pooling REIT, LLC ("Plaintiffs") in the above-referenced matter. We respectfully submit this letter seeking reconsideration of the Court's Endorsed Memo, filed September 6, 2007, in which the Court denied Plaintiffs' application for an extension until November 9, 2007 to respond to Defendants' Motion to Dismiss the Complaint, or in the Alternative, to Transfer Venue, dated May 11, 2007 ("Defendants' Motion"). As amplified below, both Plaintiffs and Defendants were unaware that the Court had deemed Plaintiffs' prior requested extension on July 26, 2007 to be "final." Had this been known, Plaintiffs would have provided a more detailed explanation in their September 5 letter as to why the interests of litigation efficiency and judicial economy—not to mention the avoidance of potentially inconsistent rulings—would all be served by the grant of Plaintiffs' application, which, for the reasons set forth below, Defendants do not oppose.

By way of background, this action pertains to a Mezzanine Loan Agreement, under which Plaintiff Hudson is Lender, and a Guaranty Agreement, under which Defendants are Guarantors, and the extent of recourse available to Plaintiff Hudson under the Guaranty. As mentioned in my September 5 letter to the Court, the parties herein also are before the United States District Court, Southern District of Florida (Miami Division), in an action entitled *Millenia Luxury Condominiums (Florida) LLC, et. al. v. Hudson Realty Capital Fund III LP, et. al.*, No. 07-20332-CIV--Graham/O'Sullivan (S.D. Fla.) (the "Florida Federal Action"). Enclosed herewith is a copy of the docket sheet in the Florida Federal Action. Separate and apart from the mediation scheduled for October 22, 2007 in the Florida Federal Action (see entry 39 on the

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enclosed docket sheet), a critical omission from my September 5 letter<sup>1</sup>—is the fact that, *sub judice* before the court in the Florida Federal Action is a motion made by Plaintiffs herein (who are defendants in the Florida Federal Action) pursuant to Rule 12(b)(3) to dismiss the Florida Federal Action based on, *inter alia*, forum selection clauses in the Loan and Guaranty Agreements, which, Plaintiffs contend, are mandatory and require that any action arising out of these Agreements be brought in New York. Accordingly, Plaintiffs' success on their dismissal motion in the Florida Federal Action could well moot Defendants' Motion in this action, since both motions turn, in large part, on the forum selection clause and the issue of venue. Conversely, if the Southern District of Florida does not find that the forum selection clauses at issue mandate the litigation of all disputes in New York, then the instant action possibly could be rendered moot, leading Plaintiffs to prosecute their claims as counterclaims in the Florida Federal Action.

Given the impending mediation date in the Florida Federal Action (October 22), and the possibility that the Southern District of Florida could rule on Plaintiff's dismissal motion prior to that October date, Plaintiffs and Defendants have agreed that adjourning Defendants' Motion in this action would serve the dual interests of litigation efficiency and avoiding the possibility of inconsistent rulings in the instant and Florida Federal Actions.

Based on the foregoing, Plaintiffs had requested and Defendants had consented to an adjournment of Plaintiffs' time to respond to Defendants' Motion until November 9, 2007. By November 9, the Southern District of Florida likely will have ruled on Plaintiffs' dismissal motion and the mediation will have taken place, the occurrence of both of which will directly impact on the course that will be followed in the instant action. Accordingly, for all these reasons, Plaintiffs respectfully request that the Court reconsider its denial of Plaintiffs' application, and grant the requested extension.

SEE TYPEWRITTEN MEMO  
ENDORSEMENT ATTACHED

Application granted  
Plaintiff's time to respond to  
Defendants' motion is extended to  
11/9/07. So ordered TDR:RPP  
014 v  
9/12/07

<sup>1</sup> My failure to reference Plaintiff's Motion to Dismiss in the Florida Federal Action in my September 5 letter was due to my not being aware that the Court, in granting Plaintiffs' July 26 request for an extension, had deemed it to be a "final extension." Since my submissions in this matter have been limited to correspondence sent via facsimile to chambers, I had not "appeared" on the ECF system as Plaintiffs' counsel in this action and thus I have not been receiving e-mail notifications of docket entries. In order to rectify this situation, this letter is being filed via ECF so as to ensure that I will receive all future ECF notifications.

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In the alternative, the parties would respectfully request an opportunity to participate in a scheduling conference with the Court to discuss how to best effectuate the orderly administration of the instant action.

Respectfully submitted,



Michael S. Gordon

MSG:dmp  
Enclosure

cc: Charles M. Tatelbaum, Esq. (Defendants' counsel) (via facsimile)  
Stephen C. Hunt, Esq. (Defendants' counsel) (via facsimile)

Case: Hudson Realty Capital Fund III v. Millenia Luxury Condominium, et al.  
Index No. 07 Civ. 3614 (RPP)

**MEMO ENDORSEMENT READS:**

*Application granted. Plaintiffs' time to respond to  
Defendant's motion is extended to 11/9/07.*

*So ordered.*

*Robert P. Patterson, Jr., U.S.D.J., 9/8/07*

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**U.S. District Court  
Southern District of Florida (Miami)  
CIVIL DOCKET FOR CASE #: 1:07-cv-20332-DLG**

Millenia Luxury Condominiums (Florida), LLC et al v.  
Hudson Realty Capital Fund III LP  
Assigned to: Judge Donald L. Graham  
Referred to: Magistrate Judge John J. O'Sullivan  
Cause: 28:2201 Constitutionality of State Statute(s)

Date Filed: 02/08/2007  
Jury Demand: None  
Nature of Suit: 890 Other Statutory  
Actions  
Jurisdiction: Federal Question

**Plaintiff**

**Millenia Luxury Condominiums  
(Florida), LLC**

represented by **Charles M. Tatelbaum**  
Adorno & Yoss  
350 E Las Olas Boulevard  
Suite 1700  
Fort Lauderdale, FL 33301-4217  
954-766-7820-fax-866  
Fax: 621-4198  
Email: ctatelbaum@adorno.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Stephen C. Hunt**  
Adorno & Yoss LLP  
350 E Las Olas Boulevard  
Suite 1700  
Fort Lauderdale, FL 33301-4217  
954-766-7834  
Fax: 954-766-7800  
Email: shunt@adorno.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**Eduardo Avila**

represented by **Charles M. Tatelbaum**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Stephen C. Hunt**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**Jack Kaplan**

represented by **Charles M. Tatelbaum**

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(See above for address)

**LEAD ATTORNEY**

**ATTORNEY TO BE NOTICED**

**Stephen C. Hunt**

(See above for address)

**LEAD ATTORNEY**

**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Hudson Realty Capital Fund III LP**

*A Delaware limited partnership*

represented by **Martin Briner Woods**

Stearns Weaver Miller Weissler

Alhadeff & Sitterson

200 E Las Olas Boulevard

New River Center Suite 2100

Fort Lauderdale, FL 33301

954-462-9555

Fax: 462-9567

Email: mwoods@swmwas.com

**LEAD ATTORNEY**

**ATTORNEY TO BE NOTICED**

**Defendant**

**HRC Fund III Pooling REIT LLC**

**Defendant**

**HRC Funding III Pooling Domestic**

**LLC**

Date Filed	#	Docket Text
02/08/2007	<u>1</u>	COMPLAINT against Hudson Realty Capital Fund III LP Filing fee \$ 350. Receipt#: 539350, filed by Millenia Luxury Condominiums (Florida), LLC, Eduardo Avila, Jack Kaplan. (Attachments: # <u>1</u> Appendix)(dj) (Entered: 02/09/2007)
02/08/2007	<u>2</u>	Corporate Disclosure Statement by Millenia Luxury Condominiums (Florida), LLC. (dj) (Entered: 02/09/2007)
02/08/2007	<u>3</u>	Summons Issued as to Hudson Realty Capital Fund III LP. (dj) (Entered: 02/09/2007)
02/28/2007	<u>4</u>	STIPULATION <i>Extending Time for Defendant to Respond to Complaint</i> by Millenia Luxury Condominiums (Florida), LLC, Eduardo Avila, Jack Kaplan. (Tatebaum, Charles) (Entered: 02/28/2007)
04/04/2007	<u>5</u>	STIPULATION <i>To Extend Time To Respond To Complaint</i> by Hudson Realty Capital Fund III LP, Millenia Luxury Condominiums (Florida),

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		LLC, Eduardo Avila, Jack Kaplan. (Tatelbaum, Charles) (Entered: 04/04/2007)
04/06/2007	<u>6</u>	ORDER granting re <u>5</u> Stipulation Extending the Time for Defendant's Response to Complaint filed by Eduardo Avila,, Jack Kaplan,, Millenia Luxury Condominiums (Florida), LLC,, Hudson Realty Capital Fund III LP, Defendant to Respond within seven (7) days.Signed by Judge Donald L. Graham on 4/6/2007.(ls) (Entered: 04/06/2007)
04/06/2007	<u>7</u>	CERTIFICATE of Counsel of Service of a Copy of the Order of the Court dated April 6, 2007 by Charles M. Tatelbaum on behalf of Millenia Luxury Condominiums (Florida), LLC, Eduardo Avila, Jack Kaplan (Tatelbaum, Charles) (Entered: 04/06/2007)
04/10/2007	<u>8</u>	AMENDED COMPLAINT For Declaratory Relief, Damages And Injunctive Relief against Hudson Realty Capital Fund III LP, filed by Millenia Luxury Condominiums (Florida), LLC, Eduardo Avila, Jack Kaplan.(Tatelbaum, Charles) (Entered: 04/10/2007)
04/11/2007	<u>9</u>	CERTIFICATE OF SERVICE by Millenia Luxury Condominiums (Florida), LLC, Eduardo Avila, Jack Kaplan of Complaint and Summons (Tatelbaum, Charles) (Entered: 04/11/2007)
04/11/2007	<u>10</u>	SUMMONS Returned Executed by Millenia Luxury Condominiums (Florida), LLC, Eduardo Avila, Jack Kaplan. Hudson Realty Capital Fund III LP served on 2/15/2007, answer due 3/7/2007. (Tatelbaum, Charles) (Entered: 04/11/2007)
04/19/2007	<u>11</u>	MOTION for Extension of Time to File Response/Reply as to <u>8</u> Amended Complaint by Hudson Realty Capital Fund III LP. (Woods, Martin) (Entered: 04/19/2007)
04/20/2007	<u>12</u>	Notice of Instruction to Filer: No proposed Order submitted re <u>11</u> MOTION for Extension of Time to File Response/Reply as to <u>8</u> Amended Complaint filed by Hudson Realty Capital Fund III LP. Counsel shall comply with the CM/ECF Procedures and submit the final version of the proposed document by e-mail in WordPerfect format. The e-mail subject line and the name of the attachment should include the case number, docket entry number, followed by a short description of the attachment (e.g., 07-cv-20332 Order on M-Enlargement of Time DE 11) to graham@flsd.uscourts.gov. (gw) (Entered: 04/20/2007)
04/30/2007	<u>13</u>	Defendant's MOTION to Dismiss <u>8</u> Amended Complaint by Hudson Realty Capital Fund III LP. Responses due by 5/14/2007 (Woods, Martin) (Entered: 04/30/2007)
05/04/2007	<u>14</u>	RESPONSE in Opposition re <u>13</u> Defendant's MOTION to Dismiss <u>8</u> Amended Complaint filed by Millenia Luxury Condominiums (Florida), LLC, Eduardo Avila, Jack Kaplan. (Tatelbaum, Charles) (Entered: 05/04/2007)
05/04/2007	<u>15</u>	NOTICE by Millenia Luxury Condominiums (Florida), LLC, Eduardo Avila, Jack Kaplan of Plaintiffs' Request for Oral Argument/Hearing

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		<i>Pursuant To Local Rule 7.1(B)</i> (Tatelbaum, Charles) (Entered: 05/04/2007)
05/08/2007	<u>16</u>	ORDER/NOTICE Setting Status Conference: Telephonic Status Conference set for 6/20/2007 02:00 PM before Judge Donald L. Graham. Joint Status Report due by 6/8/07. Signed by Judge Donald L. Graham on 5/7/07.(gw) (Entered: 05/08/2007)
05/11/2007	<u>17</u>	REPLY to Response to Motion re <u>13</u> Defendant's MOTION to Dismiss <u>8</u> Amended Complaint <i>Reply to Plaintiffs' Response in Opposition to Defendant's Motion to Dismiss and Memorandum of Law</i> filed by Hudson Realty Capital Fund III LP. (Woods, Martin) (Entered: 05/11/2007)
05/21/2007	<u>18</u>	Plaintiff's MOTION for Leave to File <i>Second Amended Complaint</i> by Millenia Luxury Condominiums (Florida), LLC, Eduardo Avila, Jack Kaplan. (Attachments: # <u>1</u> Exhibit Proposed Second Amended Complaint# <u>2</u> Text of Proposed Order Granting Plaintiffs' Motion for Leave to File Second Amended Complaint)(Tatelbaum, Charles) (Entered: 05/21/2007)
05/23/2007	<u>19</u>	Notice of Instruction to Filer re <u>18</u> Plaintiff's MOTION for Leave to File Second Amended Complaint filed by Eduardo Avila, Jack Kaplan, Millenia Luxury Condominiums (Florida), LLC. Counsel shall comply with the CM/ECF Procedures and submit the final version of the proposed document by e-mail in WordPerfect format. The e-mail subject line and the name of the attachment should include the case number, docket entry number, followed by a short description of the attachment (e.g., 07-cv-20332 DE 18 Order to graham@flsd.uscourts.gov. (gfw) (Entered: 05/23/2007)
05/25/2007	<u>20</u>	STATUS REPORT ( <i>Joint</i> ) by Millenia Luxury Condominiums (Florida), LLC, Eduardo Avila, Jack Kaplan. (Tatelbaum, Charles) (Entered: 05/25/2007)
05/29/2007	<u>21</u>	ORDER granting <u>18</u> Plaintiff's Motion to File Second Amended Complaint. Signed by Judge Donald L. Graham on 5/29/07. (gfw) (Entered: 05/29/2007)
05/31/2007	<u>22</u>	Second MOTION to Dismiss <u>21</u> Order on Motion for Leave to File by Hudson Realty Capital Fund III LP. Responses due by 6/14/2007 (Woods, Martin) (Entered: 05/31/2007)
06/05/2007	<u>23</u>	Summons Issued as to HRC Funding III Pooling Domestic LLC. (tb) (Entered: 06/06/2007)
06/07/2007	<u>24</u>	NOTICE by Millenia Luxury Condominiums (Florida), LLC, Eduardo Avila, Jack Kaplan of ( <i>Joint</i> ) <i>Election To Jurisdiction By A United States Magistrate Judge For Final Disposition Of Motions</i> (Tatelbaum, Charles) (Entered: 06/07/2007)
06/07/2007	<u>25</u>	NOTICE by HRC Fund III Pooling REIT LLC, HRC Funding III Pooling Domestic LLC re <u>22</u> Second MOTION to Dismiss <u>21</u> Order on Motion



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		for Leave to File <i>Defendants' Notice of Joinder in Defendants' Second Motion to Dismiss</i> (Woods, Martin) (Entered: 06/07/2007)
06/08/2007	<u>26</u>	Notice of Instruction to Filer ; re <u>25</u> Notice (Other), Notice (Other) filed by HRC Fund III Pooling REIT LLC,, HRC Funding III Pooling Domestic LLC. ERROR: Incorrect "Notice (Other)" event used; Correct event to use in the <i>FUTURE</i> is "Notice of Adoption" found under Notices. (gp) (Entered: 06/08/2007)
06/15/2007	<u>27</u>	SUMMONS Returned Executed by Millenia Luxury Condominiums (Florida), LLC. HRC Fund III Pooling REIT LLC served on 6/5/2007, answer due 6/25/2007. (Hunt, Stephen) (Entered: 06/15/2007)
06/15/2007	<u>28</u>	SUMMONS Returned Executed by Millenia Luxury Condominiums (Florida), LLC. HRC Funding III Pooling Domestic LLC served on 6/5/2007, answer due 6/25/2007. (Hunt, Stephen) (Entered: 06/15/2007)
06/15/2007	<u>29</u>	RESPONSE in Opposition re <u>22</u> Second MOTION to Dismiss <u>21</u> Order on Motion for Leave to File filed by Millenia Luxury Condominiums (Florida), LLC, Eduardo Avila, Jack Kaplan. (Tatelbaum, Charles) (Entered: 06/15/2007)
06/20/2007	<u>30</u>	REPLY to Response to Motion re <u>22</u> Second MOTION to Dismiss <u>21</u> Order on Motion for Leave to File <i>Reply to Plaintiffs' Response in Opposition to Defendants' Second Motion to Dismiss and Memorandum of Law</i> filed by Hudson Realty Capital Fund III LP, HRC Fund III Pooling REIT LLC, HRC Funding III Pooling Domestic LLC. (Woods, Martin) (Entered: 06/20/2007)
06/20/2007	<u>31</u>	Minute Entry for proceedings held before Judge Donald L. Graham : Status Conference held on 6/20/2007. Court Reporter: Carly Horenkamp (Attachments: # <u>1</u> ) (ag) Modified file date on 7/5/2007 (dg). (Entered: 06/26/2007)
06/27/2007	<u>32</u>	MOTION for Leave to File <i>Supplemental Memorandum of Law In Support Of Plaintiffs' Opposition To Defendants' Second Motion To Dismiss</i> by Millenia Luxury Condominiums (Florida), LLC, Eduardo Avila, Jack Kaplan. (Attachments: # <u>1</u> Exhibit Supplemental Memorandum of Law# <u>2</u> Text of Proposed Order)(Tatelbaum, Charles) (Entered: 06/27/2007)
06/29/2007	<u>33</u>	ORDER denying <u>32</u> Plaintiffs' Motion for Leave to File Supplemental Memorandum of Law in Support of Plaintiffs' Response in Opposition to Defendants' Second Motion to Dismiss. Signed by Judge Donald L. Graham on 6/28/07. (gfw) (Entered: 06/29/2007)
07/06/2007	<u>34</u>	ORDER REFERRING CASE to Magistrate Judge John J. O'Sullivan for Discovery;Signed by Judge Donald L. Graham on 07/06/2007.(bs) (Entered: 07/06/2007)
07/06/2007	<u>35</u>	ORDER REFERRING CASE to Mediation. 15 days to appoint mediator.Signed by Judge Donald L. Graham on 07/06/2007.(bs) (Entered: 07/06/2007)

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07/06/2007	<u>36</u>	SCHEDULING ORDER: Pretrial Conference set for 3/12/2008 02:00 PM before Judge Donald L. Graham. Jury Trial set for 4/14/2008 09:00 AM before Judge Donald L. Graham. Calendar Call set for 4/9/2008 02:00 PM before Judge Donald L. Graham. Amended Pleadings due by 10/29/2007. Discovery due by 1/14/2008. Joinder of Parties due by 10/29/2007. Motions due by 1/28/2008. Pretrial Stipulation due by 3/10/2008. Deadline to exchange experts due by 11/28/07. Deadline to exchange rebuttal experts due by 12/19/07. Jury Instructions and Verdict Forms or Proposed Findings of Fact and Conclusions of Law and Proposed Voir Dire Questions due by 4/2/08. Signed by Judge Donald L. Graham on 7/6/07. (gfw) (Entered: 07/06/2007)
07/09/2007	<u>37</u>	NOTICE OF UNAVAILABILITY by Millenia Luxury Condominiums (Florida), LLC, Eduardo Avila, Jack Kaplan for dates of April 7, 2008 to April 21, 2008 as a potential conflict to the scheduled trial date. (Attachments: # 1)(Tatelbaum, Charles) (Entered: 07/09/2007)
07/10/2007	<u>38</u>	Notice of Instruction to Filer, Notice of Docket Correction: re <u>37</u> Notice of Unavailability filed by Eduardo Avila, Jack Kaplan, Millenia Luxury Condominiums (Florida), LLC. ERROR: Attachments to document did not have a description; FUTURE documents containing attachments need to be described.- Corrected by Court. (gp) (Entered: 07/10/2007)
07/26/2007	<u>39</u>	ORDER Scheduling Mediation Mediation Hearing set for 10/22/2007 09:00 AM Signed by Judge Donald L. Graham on 7/26/07.(hd) (Entered: 07/27/2007)

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